

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RAFAEL MARCANO,)	
Petitioner,)	C.A. No. 24-13 Erie
)	
v.)	District Judge Susan Paradise Baxter
)	Chief Magistrate Judge Richard Lanzillo
UNITED STATES OF AMERICA,)	
Respondent.)	

MEMORANDUM ORDER

This action for habeas corpus relief was received by the Clerk of Court on January 2, 2024. In his habeas petition, Petitioner argues that his conviction and sentence should be vacated based on his attorney’s ineffectiveness in “fail[ing] to file a notice of appeal (NOA) regarding the unconstitutional plea agreement ... drafted by the Assistant United States Attorney.” Thus, in essence, Petitioner seeks relief under 28 U.S.C. § 2241, pursuant to the “savings clause” of 28 U.S.C. 2255(e), which allows a federal prisoner to challenge the validity of his underlying conviction where it “appears that the remedy by [§2255 petition] is inadequate or ineffective to test the legality of his detention.” The petition was referred to Chief United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

On January 23, 2025, Chief Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”) recommending that the petition be denied, with prejudice [ECF No. 14]. In particular, Judge Lanzillo found, *inter alia*, that Petitioner has not met the jurisdictional requirements of § 2255’s savings clause under Jones v. Hendrix, 599 U.S. 465 (2023). Petitioner has not filed any objections to the R&R.

Thus, after *de novo* review of the petition and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 28th day of February, 2025,

IT IS HEREBY ORDERED that the within petition for a writ of habeas corpus is DISMISSED, with prejudice, and the report and recommendation of Chief Magistrate Judge Lanzillo, issued on January 23, 2025 [ECF No. 14], is adopted as the opinion of this Court. As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief United States Magistrate Judge

All parties of record